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1954

October 13

Public Utilities Commission
State Office Building
Concord, New Hampshire

Re: Application of New England Greyhound Lines, Incorporated

Gentlemen:

Last week Mr. Thornton handed to me the application of New England Greyhound Lines, Incorporated for authority to transfer its Certificates of Public Convenience and Necessity No. 244 and 269 to The Greyhound Corporation, and asked my opinion whether in view of the fact that the corporation last named is a foreign corporation, such authority may legally be granted.

Although certificates of public convenience and necessity have been required of carriers of passengers by motor vehicles upon the highways of this state since April 1, 1942 (Laws 1941, c. 244), such carriers were not denominated as such utilities until 1951. In that year they were so designated by Laws 1951, c. 203.

Such carriers are, then, brought within the operation of R.L. c. 289, s. 21, et seq. Section 21 requires, generally, that the approval of the Commission be secured before a public utility "shall commence its business as such within this state, or shall engage in such business . . .". Sections 22 and 23 are set forth as follows:

"22. Foreign Corporation. No permission under the preceding section shall be granted to any corporation not organized under the laws of this state, and no authority to transfer or lease the franchises, works or system, or any part of the franchises, works or system of any public utility in this state to any such corporation shall be granted under section 28."

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"23. Exceptions. The provisions of the precoding section shall not apply to any corporation operating a public utility plant in this state on June 1, 1911, or doing or desiring to do an interstate business."

Such belief as may have been current prior to the decision in Hollows Falls, Etc., Co. v. State, 94 N.H. 187, that the phrase in section 23 exempting a utility engaged in interstate commerce from the provisions of the statutory plan so long as interstate commerce did, in fact, constitute a part of such utility's business, was effectively dispelled by that decision. Therefore, the fact that the certificates under consideration here are used in connection with an interstate business does not render the sections cited inapplicable.

It is recognized that there may be certificates of public convenience and necessity which were acquired prior to the 1951 legislation and which are as yet being availed of by the carriers which originally acquired them or to whom they were transferred prior to 1951 although such carriers may not be incorporated under the laws of New Hampshire. The legality of such use is not now in question.

It does seem clear, however, that since 1951 a foreign corporation may not have issued to it an original certificate of public convenience and necessity, or transferred to it an existing one. In this view, the question upon which our opinion was sought must be answered in the negative.

Your file is returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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